

AMENDED IN ASSEMBLY MARCH 29, 2007

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

**ASSEMBLY BILL**

**No. 881**

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**Introduced by Assembly Member Mullin  
(Principal coauthor: Assembly Member Evans)**

February 22, 2007

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An act to amend Sections 27315, 27361, 27363, 27363.5, and 27365 of, to add Section 27360.6 to, and to repeal and add Sections 27360 and 27360.5 of, the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

AB 881, as amended, Mullin. Vehicles: child passengers: *restraint system*.

(1) Existing law establishes rules of the road governing the operation of vehicles upon the highways. A violation of these rules is a public offense.

Existing law prohibits a parent or legal guardian, while present in a motor vehicle, from permitting his or her child or ward to be transported upon a highway in the vehicle without providing and properly securing the child or ward in a rear seat in a child passenger restraint system meeting applicable federal safety standards, unless the child or ward is 6 years of age or older or weighs 60 pounds or more. Existing law imposes a similar prohibition on the driver of a vehicle, unless the parent or legal guardian of the child is also present in the vehicle and is not the driver. Existing law places certain duties and restrictions on hospitals, clinics, and birthing centers, as well as car rental agencies, involving providing information and notices regarding child passenger restraint system laws.

This bill would recast these provisions by requiring ~~that~~ a child who is under 8 years of age to be secured in a rear seat in an appropriate child passenger restraint system. The bill would provide an exception from the child passenger restraint system requirement for a child who is under 8 years of age, but who is 4 feet 9 inches tall or taller and who is properly restrained by a safety belt. The bill would prohibit a parent or legal guardian or driver from transporting in a motor vehicle, a child or ward who is 8 years of age or older, but less than 16 years of age, without properly securing the child or ward in an appropriate child passenger restraint system or a safety belt.

The bill additionally would require, for transport upon a highway in a motor vehicle, that a parent or legal guardian properly secure his or her child or ward who is under 8 years of age in a rear-facing child passenger restraint system, unless the child or ward is one year of age or older and ~~also~~ weighs 20 pounds or more. The bill would impose a similar requirement on the driver of a motor vehicle, unless the parent or legal guardian of the child is also present in the vehicle and is not the driver.

The bill would make conforming changes in existing law.

Because this bill would expand the scope of existing crimes and would create a new crime, the bill would impose a state-mandated local program.

*The bill's provisions would become operative January 1, 2009.*

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 27315 of the Vehicle Code is amended
- 2 to read:
- 3 27315. (a) The Legislature finds that a mandatory seatbelt law
- 4 will contribute to reducing highway deaths and injuries by
- 5 encouraging greater usage of existing manual seatbelts, that
- 6 automatic crash protection systems that require no action by vehicle
- 7 occupants offer the best hope of reducing deaths and injuries, and

1 that encouraging the use of manual safety belts is only a partial  
2 remedy for addressing this major cause of death and injury. The  
3 Legislature declares that the enactment of this section is intended  
4 to be compatible with support for federal safety standards requiring  
5 automatic crash protection systems and should not be used in any  
6 manner to rescind federal requirements for installation of automatic  
7 restraints in new cars.

8 (b) This section shall be known and may be cited as the Motor  
9 Vehicle Safety Act.

10 (c) (1) As used in this section, “motor vehicle” means a  
11 passenger vehicle, a motortruck, or a truck tractor, but does not  
12 include a motorcycle.

13 (2) For purposes of this section, a “motor vehicle” also means  
14 a farm labor vehicle, regardless of the date of certification under  
15 Section 31401.

16 (d) (1) A person shall not operate a motor vehicle on a highway  
17 unless that person and all passengers 16 years of age or over are  
18 properly restrained by a safety belt. This paragraph does not apply  
19 to the operator of a taxicab, as defined in Section 27908, when the  
20 taxicab is driven on a city street and is engaged in the transportation  
21 of a fare-paying passenger. The safety belt requirement established  
22 by this paragraph is the minimum safety standard applicable to  
23 employees being transported in a motor vehicle. This paragraph  
24 does not preempt any more stringent or restrictive standards  
25 imposed by the Labor Code or any other state or federal regulation  
26 regarding the transportation of employees in a motor vehicle.

27 (2) The operator of a limousine for hire or the operator of an  
28 authorized emergency vehicle, as defined in subdivision (a) of  
29 Section 165, shall not operate the limousine for hire or authorized  
30 emergency vehicle unless the operator and any passengers eight  
31 years of age or over, in the front seat are properly restrained by a  
32 safety belt.

33 (3) The operator of a taxicab shall not operate the taxicab unless  
34 any passengers eight years of age or over, in the front seat are  
35 properly restrained by a safety belt.

36 (e) A person 16 years of age or over shall not be a passenger in  
37 a motor vehicle on a highway unless that person is properly  
38 restrained by a safety belt. This subdivision does not apply to a  
39 passenger in a sleeper berth, as defined in subdivision ~~(v)~~ (x) of  
40 Section 1201 of Title 13 of the California Code of Regulations.

(f) Every owner of a motor vehicle, including every owner or operator of a taxicab, as defined in Section 27908, or a limousine for hire, operated on a highway shall maintain safety belts in good working order for the use of occupants of the vehicle. The safety belts shall conform to motor vehicle safety standards established by the United States Department of Transportation. This subdivision does not, however, require installation or maintenance of safety belts where not required by the laws of the United States applicable to the vehicle at the time of its initial sale.

(g) This section does not apply to a passenger or operator with a physically disabling condition or medical condition that would prevent appropriate restraint in a safety belt, if the condition is duly certified by a licensed physician and surgeon or by a licensed chiropractor who shall state the nature of the condition, as well as the reason the restraint is inappropriate. This section also does not apply to a public employee, when in an authorized emergency vehicle as defined in paragraph (1) of subdivision (b) of Section 165, or to a passenger in a seat behind the front seat of an authorized emergency vehicle as defined in paragraph (1) of subdivision (b) of Section 165 operated by the public employee, unless required by the agency employing the public employee.

(h) Notwithstanding subdivision (a) of Section 42001, a violation of subdivision (d), (e), or (f) is an infraction punishable by a fine of not more than twenty dollars (\$20) for a first offense, and a fine of not more than fifty dollars (\$50) for each subsequent offense. In lieu of the fine and any penalty assessment or court costs, the court, pursuant to Section 42005, may order that a person convicted of a first offense attend a school for traffic violators or any other court-approved program in which the proper use of safety belts is demonstrated.

(i) In a civil action, a violation of subdivision (d), (e), or (f) or information of a violation of subdivision (h) does not establish negligence as a matter of law or negligence per se for comparative fault purposes, but negligence may be proven as a fact without regard to the violation.

(j) If the United States Secretary of Transportation fails to adopt safety standards for manual safety belt systems by September 1, 1989, a motor vehicle manufactured after that date for sale or sold in this state shall not be registered unless it contains a manual safety belt system that meets the performance standards applicable

1 to automatic crash protection devices adopted by the Secretary of  
2 Transportation pursuant to Federal Motor Vehicle Safety Standard  
3 No. 208 (49 C.F.R. 571.208) as in effect on January 1, 1985.

4 (k) Each motor vehicle offered for original sale in this state that  
5 has been manufactured on or after September 1, 1989, shall comply  
6 with the automatic restraint requirements of Section S4.1.2.1 of  
7 Federal Motor Vehicle Safety Standard No. 208 (49 C.F.R.  
8 571.208), as published in Volume 49 of the Federal Register, No.  
9 138, page 29009. An automobile manufacturer who sells or delivers  
10 a motor vehicle subject to the requirements of this subdivision,  
11 and fails to comply with this subdivision, shall be punished by a  
12 fine of not more than five hundred dollars (\$500) for each sale or  
13 delivery of a noncomplying motor vehicle.

14 (l) Compliance with subdivision (j) or (k) by a manufacturer  
15 shall be made by self-certification in the same manner as  
16 self-certification is accomplished under federal law.

17 (m) This section does not apply to a person actually engaged in  
18 delivery of newspapers to customers along the person's route if  
19 the person is properly restrained by a safety belt prior to  
20 commencing and subsequent to completing delivery on the route.

21 (n) This section does not apply to a person actually engaged in  
22 collection and delivery activities as a rural delivery carrier for the  
23 United States Postal Service if the person is properly restrained  
24 by a safety belt prior to stopping at the first box and subsequent  
25 to stopping at the last box on the route.

26 (o) This section does not apply to a driver actually engaged in  
27 the collection of solid waste or recyclable materials along that  
28 driver's collection route if the driver is properly restrained by a  
29 safety belt prior to commencing and subsequent to completing the  
30 collection route.

31 (p) Subdivisions (d), (e), (f), (g), and (h) shall become  
32 inoperative immediately upon the date that the United States  
33 Secretary of Transportation, or his or her delegate, determines to  
34 rescind the portion of the Federal Motor Vehicle Safety Standard  
35 No. 208 (49 C.F.R. 571.208) that requires the installation of  
36 automatic restraints in new motor vehicles, except that those  
37 subdivisions shall not become inoperative if the secretary's decision  
38 to rescind that Standard No. 208 is not based, in any respect, on  
39 the enactment or continued operation of those subdivisions.

40 SEC. 2. Section 27360 of the Vehicle Code is repealed.

1 SEC. 3. Section 27360 is added to the Vehicle Code, to read:

2 27360. (a) A parent, legal guardian, or driver shall not transport  
3 on a highway in a motor vehicle, as defined in Section 27315, a  
4 child or ward who is under eight years of age, without properly  
5 securing that child in a rear seat in an appropriate child passenger  
6 restraint system meeting applicable federal motor vehicle safety  
7 standards.

8 (b) Subdivision (a) does not apply to a driver if the parent or  
9 legal guardian of the child is also present in the motor vehicle and  
10 is not the driver.

11 SEC. 4. Section 27360.5 of the Vehicle Code is repealed.

12 SEC. 5. Section 27360.5 is added to the Vehicle Code, to read:

13 27360.5. (a) A parent, legal guardian, or driver shall not  
14 transport on a highway in a motor vehicle, as defined in Section  
15 27315, a child or ward who is eight years of age or older, but less  
16 than 16 years of age, without properly securing that child or ward  
17 in an appropriate child passenger restraint system or safety belt  
18 meeting applicable federal motor vehicle safety standards.

19 (b) Subdivision (a) does not apply to a driver if the parent or  
20 legal guardian of the child is also present in the motor vehicle and  
21 is not the driver.

22 SEC. 6. Section 27360.6 is added to the Vehicle Code, to read:

23 27360.6. (a) (1) For a conviction under Section 27360 or  
24 27360.5, a first offense is punishable by a fine of one hundred  
25 dollars (\$100), except that the court may reduce or waive the fine  
26 if the defendant establishes to the satisfaction of the court that he  
27 or she is economically disadvantaged, and the court, instead, refers  
28 the defendant to a community education program that includes,  
29 but is not limited to, education on the proper installation and use  
30 of a child passenger restraint system for children of all ages, and  
31 provides certification to the court of completion of that program.  
32 Upon completion of the program, the defendant shall provide proof  
33 of participation in the program. If an education program on the  
34 proper installation and use of a child passenger restraint system is  
35 not available within 50 miles of the residence of the defendant,  
36 the requirement to participate in that program shall be waived. If  
37 the fine is paid, waived, or reduced, the court shall report the  
38 conviction to the department pursuant to Section 1803.

39 (2) The court may require a defendant described in paragraph  
40 (1) to attend an education program that includes demonstration of

1 proper installation and use of a child passenger restraint system  
2 and provides certification to the court that the defendant has  
3 presented for inspection a child passenger restraint system that  
4 meets applicable federal safety standards.

5 (b) (1) A second or subsequent conviction of the same section  
6 is punishable by a fine of two hundred fifty dollars (\$250), no part  
7 of which may be waived by the court, except that the court may  
8 reduce or waive the fine if the defendant establishes to the  
9 satisfaction of the court that he or she is economically  
10 disadvantaged, and the court, instead refers the defendant to a  
11 community education program that includes, but is not limited to,  
12 education on the proper installation and use of child passenger  
13 restraint systems for children of all ages, and provides certification  
14 to the court of completion of that program. Upon completion of  
15 the program, the defendant shall provide proof of participation in  
16 the program. If an education program on the proper installation  
17 and use of a child passenger restraint system is not available within  
18 50 miles of the residence of the defendant, the requirement to  
19 participate in that program shall be waived. If the fine is paid,  
20 waived, or reduced, the court shall report the conviction to the  
21 department pursuant to Section 1803.

22 (2) The court may require a defendant described in paragraph  
23 (1) to attend an education program that includes demonstration of  
24 proper installation and use of a child passenger restraint system  
25 and provides certification to the court that the defendant has  
26 presented for inspection a child passenger restraint system that  
27 meets applicable federal safety standards.

28 (c) Notwithstanding any other provision of law, the fines  
29 collected under this section shall be allocated as follows:

30 (1) (A) Sixty percent to health departments of local jurisdictions  
31 where the violation occurred, to be used for a community education  
32 program that includes, but is not limited to, demonstration of the  
33 installation of a child passenger restraint system for children of all  
34 ages and also assists an economically disadvantaged family in  
35 obtaining a child passenger restraint system through a low-cost  
36 purchase or loan. The county or city health department shall  
37 designate a coordinator to facilitate the creation of a special account  
38 and to develop a relationship with the court system to facilitate  
39 the transfer of funds to the program. The county or city may  
40 contract for the implementation of the program. Prior to obtaining

1 possession of a child passenger restraint system pursuant to this  
2 section, a person shall attend an education program that includes  
3 demonstration of proper installation and use of a child passenger  
4 restraint system.

5 (B) As the proceeds from fines become available, county or city  
6 health departments shall prepare and maintain a listing of all child  
7 passenger restraint low-cost purchase or loaner programs in their  
8 counties, including a semiannual verification that all programs  
9 listed are in existence. Each county or city shall forward the listing  
10 to the Office of Traffic Safety in the Business, Transportation and  
11 Housing Agency and the courts, birthing centers, community child  
12 health and disability prevention programs, county clinics, prenatal  
13 clinics, women, infants, and children programs, and county  
14 hospitals in that county, who shall make the listing available to  
15 the public. The Office of Traffic Safety shall maintain a listing of  
16 all of the programs in the state.

17 (2) Twenty-five percent to the county or city for the  
18 administration of the program.

19 (3) Fifteen percent to the city, to be deposited in its general fund  
20 except that if the violation occurred in an unincorporated area, this  
21 amount shall be allocated to the county for purposes of paragraph  
22 (1).

23 SEC. 7. Section 27361 of the Vehicle Code is amended to read:

24 27361. A law enforcement officer reasonably suspecting a  
25 violation of Section 27360 or 27360.5, may stop a vehicle  
26 transporting a child appearing to the officer to be within the age  
27 specified in Section 27360 or 27360.5. The officer may issue a  
28 notice to appear for a violation of Section 27360 or 27360.5.

29 SEC. 8. Section 27363 of the Vehicle Code is amended to read:

30 27363. (a) The court may exempt from the requirements of  
31 this article a class of child by age, weight, or size if it is determined  
32 that the use of a child passenger restraint system would be  
33 impractical by reason of physical unfitness, medical condition, or  
34 size. The court may require satisfactory proof of the child's  
35 physical unfitness, medical condition, or size and that an  
36 appropriate special needs child passenger restraint system is not  
37 available.

38 (b) In case of a life-threatening emergency, or when a child is  
39 being transported in an authorized emergency vehicle, if a child  
40 passenger restraint system is not available, a child may be



1 transported without the use of that system, but the child shall be  
2 secured by a seatbelt.

3 (c) A child weighing more than 40 pounds may be transported  
4 in the back seat of a vehicle while wearing only a lap safety belt  
5 when the back seat of the vehicle is not equipped with a  
6 combination lap and shoulder safety belt.

7 (d) (1) Notwithstanding Section 27360, a child or ward under  
8 the age of eight years who is four feet nine inches in height or  
9 taller may be properly restrained by a safety belt rather than a child  
10 passenger restraint system.

11 (2) For purposes of Section 27360, a child shall be properly  
12 secured in a rear-facing child passenger restraint system unless  
13 that child is one year of age or more and also weighs 20 pounds  
14 or more.

15 (e) For purposes of Section 27360, a child or ward under eight  
16 years of age may ride properly secured in an appropriate child  
17 passenger restraint system meeting applicable federal motor vehicle  
18 safety standards in the front seat of a motor vehicle under any of  
19 the following circumstances:

20 (1) There is no rear seat.

21 (2) The rear seats are side-facing jump seats.

22 (3) The rear seats are rear-facing seats.

23 (4) The child passenger restraint system cannot be installed  
24 properly in the rear seat.

25 (5) All rear seats are already occupied by children seven years  
26 of age or under.

27 (6) Medical reasons necessitate that the child or ward not ride  
28 in the rear seat. The court may require satisfactory proof of the  
29 child's medical condition.

30 (f) Notwithstanding subdivision (e), a child shall not be  
31 transported in a rear-facing child passenger restraint system in the  
32 front seat of a motor vehicle that is equipped with an active frontal  
33 passenger airbag.

34 SEC. 9. Section 27363.5 of the Vehicle Code is amended to  
35 read:

36 27363.5. (a) A public or private hospital, clinic, or birthing  
37 center, shall, at the time of the discharge of a child provide and  
38 discuss information on the current law requiring child passenger  
39 restraint systems, safety belts, and transporting children in rear

1 seats to the parents or to the person to whom the child is released  
2 if the child is under eight years of age.

3 (b) A public or private hospital, clinic, or birthing center shall  
4 not be responsible for the failure of the parent or person to whom  
5 the child is released to properly transport the child.

6 SEC. 10. Section 27365 of the Vehicle Code is amended to  
7 read:

8 27365. (a) (1) A car rental agency in California shall inform  
9 each of its customers of Section 27360 by posting, in a place  
10 conspicuous to the public in each established place of business of  
11 the agency, a notice not smaller than 15 by 20 inches that states  
12 the following: "CALIFORNIA LAW REQUIRES ALL  
13 CHILDREN UNDER 8 YEARS OF AGE TO BE  
14 TRANSPORTED IN THE REAR SEAT OF THE VEHICLE IN  
15 A CHILD RESTRAINT SYSTEM. THIS AGENCY IS  
16 REQUIRED TO PROVIDE FOR RENTAL A CHILD  
17 RESTRAINT SYSTEM IF YOU DO NOT HAVE A CHILD  
18 RESTRAINT SYSTEM YOURSELF."

19 (2) The posted notice specified in paragraph (1) is not required  
20 if the car rental agency's place of business is located in a hotel that  
21 has a business policy prohibiting the posting of signs or notices in  
22 any area of the hotel. In that case, a car rental agency shall furnish  
23 a written notice to each customer that contains the same  
24 information as required for the posted notice.

25 (b) A car rental agency in California shall have available for,  
26 and shall, upon request, provide for rental to, adults traveling with  
27 children under eight years of age, child passenger restraint systems  
28 that are certified by the manufacturer to meet applicable federal  
29 motor vehicle safety standards for use by children, are in good and  
30 safe condition, with no missing original parts, and are not older  
31 than five years.

32 (c) A violation of this section is an infraction punishable by a  
33 fine of one hundred dollars (\$100).

34 SEC. 11. *The Legislature finds and declares that this act allows*  
35 *the state to be eligible for federal grants pursuant to Section 2011*  
36 *of the Safe, Accountable, Flexible, Efficient Transportation Act:*  
37 *A Legacy for Users (SAFETEA-LU) (Section 2011 of Public Law*  
38 *109-59), for public education and the provision of low-cost and*  
39 *no-cost booster seats.*

1     ~~SEC. 11.~~

2     ~~SEC. 12.~~ No reimbursement is required by this act pursuant to  
3 Section 6 of Article XIII B of the California Constitution because  
4 the only costs that may be incurred by a local agency or school  
5 district will be incurred because this act creates a new crime or  
6 infraction, eliminates a crime or infraction, or changes the penalty  
7 for a crime or infraction, within the meaning of Section 17556 of  
8 the Government Code, or changes the definition of a crime within  
9 the meaning of Section 6 of Article XIII B of the California  
10 Constitution.

11    ~~SEC. 13.~~ *This act shall become operative on January 1, 2009.*